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## **FSA must become more forceful in prosecuting financial crimes in order to repair public confidence in the financial system**

- ∞ Criminal cases being too frequently dealt with as mere regulatory infringements
  - ∞ Minimal deterrents for potential future crimes

The FSA has demonstrated a marked reluctance to prosecute criminal offences committed within the financial services sector, says Amanda Pinto Q.C., co-author of the book *Corporate Criminal Liability*, published by Sweet & Maxwell, the legal information providers.

Under the Financial Services and Markets Act 2000 the FSA has four statutory objectives of which fighting financial crime is one. However, Amanda Pinto QC says that the FSA's track record in treating financial offences as breaches of regulations rather than crimes is now coming into question.

Says Amanda Pinto: "There are many cases of misconduct that the FSA has pursued as regulatory breaches where the evidence suggests that these offences are both substantial and criminal, such as fraud and misleading conduct. These cases could be prosecuted in the criminal courts, yet the FSA chooses to deal with them as if they were simply regulatory infringements."

Amanda Pinto says that it is cheaper and easier for the FSA to bring regulatory rather than criminal proceedings, which is doubtless why this route is considered attractive. However, the FSA has to exercise its judgment within particular parameters in deciding whether to deal with an offence in the regulatory or criminal domain and prosecutors must now ask themselves if this approach is having the desired effect either on public confidence or in providing the deterrence the market requires.

Amanda Pinto explains: "There has been a drastic drop in public confidence in the operation of the financial markets. Suggestions of market rigging and dishonest conduct are widespread. Prosecuting appropriate cases as crimes would send a clear message to the investing public that these problems are being robustly addressed, whilst simultaneously acting as a deterrent to those operating in the markets; this would represent a significant step towards restoring confidence in the regulator and, of course, the markets."

She adds: "Professionals may still be operating in the belief that, at worst, they are likely to receive a hefty fine from the FSA. The financial incentive for companies to take risks that might fall foul of regulation is obvious and regulatory proceedings may simply be insufficient to discourage such practices. The FSA should raise its profile in protecting the financial system and that it exists not just to collect income from fines, but to actually regulate."

**ENDS**

## Notes to Editors:

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